

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

RICHARD IDEN,

Plaintiff,

v.

A. ALZATE, *et al.*,

Defendants.

Case No. 3:20-cv-00127-MMD-WGC

ORDER

On February 24, 2020, Plaintiff, an inmate in the custody of the Nevada Department of Corrections (“NDOC”), filed a notice of complaint. (ECF No. 1-1.) On February 26, 2020, this Court issued an order directing Plaintiff to file a complaint and a fully complete application to proceed *in forma pauperis* or pay the full filing fee of \$400 within 45 days from the date of that order. (ECF No. 3 at 2.) The 45-day period has now expired, and Plaintiff has not filed a complaint, an application to proceed *in forma pauperis*, paid the full filing \$400 fee, or otherwise responded to the Court’s order. The Court will therefore dismiss this case.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. *See Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440–41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule

1 requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Serv.*,
2 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with court
3 order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (affirming dismissal for
4 lack of prosecution and failure to comply with local rules).

5 In determining whether to dismiss an action for lack of prosecution, failure to obey
6 a court order, or failure to comply with local rules, the court must consider several factors:
7 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
8 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
9 disposition of cases on their merits; and (5) the availability of less drastic alternatives. See
10 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130;
11 *Ferdik*, 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.

12 Here, the Court finds that the first two factors weigh in favor of dismissal. The third
13 factor, risk of prejudice to Defendants, also weighs in favor of dismissal, since a
14 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
15 ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542 F.2d 522,
16 524 (9th Cir. 1976). The fourth factor, public policy favoring disposition of cases on their
17 merits, is greatly outweighed by the factors in favor of dismissal discussed herein. Finally,
18 a court's warning to a party that his failure to obey the court's order will result in dismissal
19 satisfies the "consideration of alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*,
20 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424. The Court's order requiring Plaintiff to
21 file a complaint and an application to proceed *in forma pauperis* or pay the full \$400 filing
22 fee within 45 days expressly stated: "IT IS FURTHER ORDERED that if Plaintiff does not
23 timely comply with this order, dismissal of this action may result." (ECF No. 3 at 2.) Thus,
24 Plaintiff had adequate warning that dismissal would result from his noncompliance with
25 the Court's order to file an application to proceed *in forma pauperis* or pay the full \$400
26 filing fee within 45 days.

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1 It is therefore ordered that this action is dismissed without prejudice based on
2 Plaintiff's failure to file a complaint and an application to proceed *in forma pauperis* or pay
3 the full \$400 filing fee in compliance with this Court's February 26, 2020 order.

4 It is further ordered that the Clerk of the Court enter judgment accordingly and close
5 this case.

6 DATED THIS 21st day of April 2020.

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9 MIRANDA M. DU
10 CHIEF UNITED STATES DISTRICT JUDGE
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